

**UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

MORA DEVELOPMENT CORPORATION  
and MORA DEVELOPMENT, S.E.,

Defendants.

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Civil No. \_\_\_\_\_

**COMPLAINT**

The United States of America (“United States”), by the authority of the Attorney General of the United States, acting on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), alleges as follows:

**NATURE OF THE ACTION**

1. This civil action is brought against Mora Development Corporation (“MDC”) and Mora Development, S.E. (“MDSE”) (“Defendants”) pursuant to Sections 309(b) and (d) of the Clean Water Act (“Act”), 33 U.S.C. §§ 1319(b) and (d), for civil penalties arising from their illegal discharges of pollutants to waters of the United States in violation of Section 301 of the Act, 33 U.S.C. § 1311.

2. Defendants are two affiliated real estate development companies. They built two housing developments, the Las Cascadas II residential development (“Cascadas”) in Toa Alta, Puerto Rico, and the Villas de Montecielo residential development (“Montecielo”) in Guaynabo, Puerto Rico. The Defendants built sewage collection systems for the developments but did not connect those systems to the Puerto Rico Aqueduct and Sewer Authority’s (“PRASA’s”) municipal sewage collection system. Instead, from 2007 to 2013, MDC discharged raw sewage

from the Cascadas sewage collection system into the local municipal storm water system, which then flowed into a water of the United States. From 2009 to 2013, MDSE and MDC also discharged raw sewage from the Montecielo sewage collection system into an unnamed creek that is a water of the United States.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over the subject matter of this action and the parties pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. §§ 1319(b) and (d), and pursuant to 28 U.S.C. §§ 1331, 1345 and 1355.

4. Venue is proper in the District of Puerto Rico pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395, because the violations occurred in this district, and because the Defendants reside and have their principal places of business in this district.

### **THE PARTIES**

5. Plaintiff is the United States of America on behalf of the Administrator of the EPA.

6. Defendant MDC is a Puerto Rico corporation with its principal business office at 680 Cesar Gonzalez Street, San Juan, Puerto Rico. MDC is a “person” as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

7. Defendant MDSE is a “special partnership” formed under Puerto Rico law with its principal business office at 680 Cesar Gonzalez Street, San Juan, Puerto Rico. MDSE is a “person” as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

## **STATUTORY AND REGULATORY BACKGROUND**

8. Section 301(a) of the Act prohibits the discharge of any pollutant by any person to navigable waters except as permitted by the Act and the regulations thereunder. 33 U.S.C.

§ 1311(a).

9. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” to mean, among other things, “any addition of any pollutant to navigable waters from any point source ...”

10. Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines the term “point source” as “any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, or discrete fissure from which pollutants may be discharged.”

11. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines the term “pollutant” to include, among other things, sewage.

12. Section 502(7) of the Act, 33 U.S.C. § 1362(7), defines the term “navigable waters” as “waters of the United States, including the territorial seas.” “Waters of the United States” has been further defined to include, among other things, waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; interstate waters; and tributaries of such waters. 40 C.F.R. § 122.2.

13. Section 309(b) of the Act, 33 U.S.C. § 1319(b), authorizes the Administrator to commence a civil action for appropriate relief when any person violates Section 301 of the Act.

14. Section 309(d) of the Act, 33 U.S.C. § 1319(d), provides that any person who violates, among other things, Section 301 of the Act shall be subject to a civil penalty of up to \$25,000 per day for each violation.

15. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2641 note: Pub. L. 101-410, enacted October 5, 1990; 104 Stat. 890), as amended by the Debt Collection Improvements Act of 1996 (31 U.S.C. § 3701 note: Pub. L. 101-134, enacted April 26, 1996, 110 Stat. 1321), EPA promulgated the Civil Monetary Penalty Inflation Adjustment Rule. Under that rule, EPA may seek civil penalties of up to \$32,500 per day for each violation occurring from March 15, 2004 through January 12, 2009, and of up to \$37,500 per day for each violation occurring after January 12, 2009.

## **GENERAL ALLEGATIONS**

### ***Cascadas***

16. Cascadas is a development of about 85 single family homes located at State Road 828, Km. 18.25, Bucarabones Ward, in the municipality of Toa Alta, Puerto Rico.

17. MDC sold homes at Cascadas from 2007 through March 20, 2013.

18. During this time period, the development had a sewage collection system, which was owned and operated by MDC. The sewage collection system terminated at a sanitary manhole, and sewage accumulated there.

19. On or about October 31, 2007, MDC installed a pipe from the Cascadas manhole to an adjacent storm drain that was a part of the Toa Alta municipal storm water system (Toa Alta MS4).

20. The Toa Alta MS4 was constructed for the purpose of collecting storm water and discharging the storm water to surface waters. Storm water originating at Cascadas enters the Toa Alta MS4 through storm drains and then is channeled into a storm-water catch basin. From the catch basin, the storm water discharges to a retention pond that was constructed for the purpose of collecting sediment from the storm water. Upon reaching the retention pond, the

storm water discharges through a 42-inch underground pipe into Quilan Creek. The storm drains, the catch basin, the pipe to the retention pond, the retention pond, and the 42-inch underground pipe all are components of the Toa Alta MS4.

21. The connecting pipe that MDC installed was buried under the pavement and it discharged into the adjacent storm drain at a point below the storm drain grate.

22. Sewage accumulating in the Cascadas manhole then flowed directly into the Toa Alta MS4.

23. Like the storm water for which the Toa Alta MS4 was constructed, sewage from the Cascadas manhole passed through the Toa Alta MS4, eventually flowing into Quilan Creek.

24. Specifically, sewage that accumulated in the Cascadas manhole flowed via MDC's connecting pipe into the storm drain, then into the catch basin, then through a pipe that discharged to the retention pond, then through the 42-inch underground pipe and finally into Quilan Creek.

25. Quilan Creek is a tributary of the Bucarabones River that flows year-round and has a bed and banks and ordinary high water mark. The Bucarabones River flows into the La Plata River.

26. MDC never received any permit to discharge sewage at Cascadas.

27. MDC connected the Cascadas sewage collection system to the PRASA system on or about March 20, 2013. PRASA then became the operator of the Cascadas sewage collection system. Since then, improper sewage discharges at Cascadas have ceased.

### ***Montecielo***

28. Montecielo is a development of single family homes located at State Road 833, Km. 8.8, Santa Rosa III Ward, in the municipality of Guaynabo.

29. Both MDSE and MDC developed Montecielo. The Defendants originally intended to build 883 homes there but only constructed 24 homes.

30. The Defendants sold 16 of the homes from 2009 through 2013.

31. MDC and MDSE were the owners and MDSE was the operator of the Montecielo sewage collection system.

32. At all times relevant to this complaint, the Montecielo sewage collection system terminated at a manhole which was, in turn, connected via a plastic (PVC) pipe to an underground storage tank.

33. The plastic pipe includes a “Y” connector at the end, with the downward leg of the Y directing sewage into an opening at the top of the storage tank, and the horizontal leg of the Y directing sewage past the tank onto the adjacent ground.

34. Commencing when the Montecielo development was first occupied on September 10, 2009, sewage regularly discharged onto the ground from both the horizontal leg of the Y pipe and from the storage tank. This sewage flowed into a nearby ditch, and then flowed into a nearby unnamed creek.

35. The unnamed creek is a tributary of the Bayamón River that flows year-round and has a bed and banks and ordinary high water mark.

36. MDC and MDSE never received any permit to discharge sewage at Montecielo.

37. On June 28, 2013, EPA issued an administrative compliance order directing the Defendants to, among other things, cease discharging sewage into the unnamed creek. On or about July 18, 2013, the Defendants routed the sewage into a different sewage collection tank and the illegal discharges to the unnamed creek ceased.

### **CLAIM FOR RELIEF**

38. Paragraphs 1 through 37 are realleged and incorporated herein.

39. The sewage MDC and MDSE discharged from the Cascadas and Montecielo sewage collection systems is a pollutant, as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

40. The Cascadas and Montecielo sewage collection systems are point sources as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

41. Both Quilan Creek and the unnamed creek near Montecielo are “navigable waters” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

42. MDC violated Section 301 of the Act, 33 U.S.C. § 1311(a) by discharging a pollutant, namely sewage, from a point source, namely the Cascadas sewage treatment system, into a navigable water, namely Quilan Creek.

43. MDC and MDSE violated Section 301 of the Act, 33 U.S.C. § 1311(a), by discharging a pollutant, namely sewage, from a point source, namely the Montecielo sewage treatment system, into a navigable water, namely the unnamed creek near Montecielo.

44. MDC is liable for civil penalties for each violation of Section 301 of the Act, 33 U.S.C. § 1311(a), at Cascadas.

45. MDC and MDSE are liable for civil penalties for each violation of Section 301 of the Act, 33 U.S.C. § 1311(a), at Montecielo.

### **RELIEF SOUGHT**

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court grant the following relief:

1. Order that MDC be assessed, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), civil penalties of up to \$32,500 per day for each violation of the Act at Cascadas occurring after March 15, 2004 through January 12, 2009, and up to \$37,500 per day for each violation of the Act at Cascadas occurring after January 12, 2009;
2. Order that Defendants be assessed, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), civil penalties of up to \$32,500 per day for each violation of the Act at Montecielo occurring from March 15, 2004 through January 12, 2009, and up to \$37,500 per day for each violation of the Act at Montecielo occurring after January 12, 2009;
3. Award the United States its costs in this action; and
4. Award such other relief as the Court deems just and proper.

Respectfully submitted,

For the United States of America

ELLEN M. MAHAN  
Deputy Section Chief  
United States Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section

March 14, 2019  
Dated

/s/ Patrick B. Bryan  
PATRICK B. BRYAN  
Trial Attorney  
United States Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, DC 20044-7611  
Telephone: 202-616-8299  
Facsimile: 202-616-2427  
E-mail: Patrick.Bryan@usdoj.gov  
Fed Bar (PR) No. G02107



ROSA E. RODRIGUEZ-VELEZ  
United States Attorney  
District of Puerto Rico

HECTOR E. RAMIREZ  
Assistant United States Attorney  
District of Puerto Rico  
Torre Chardon, Suite 1201  
350 Carlos Chardón Avenue  
San Juan, PR 00918

Of Counsel:

HECTOR L. VÉLEZ CRUZ  
Lead General Attorney  
Associate Regional Counsel for Caribbean Programs  
United States Environmental Protection Agency  
City View Plaza II, Suite 7000  
#48 Rd. 165 km 1.2  
Guaynabo, PR 00968-8069  
Telephone: 787-977-5850  
E-mail: Velez.Hector@epa.gov

EVELYN RIVERA-OCASIO  
Assistant Regional Counsel  
Office of Regional Counsel – Caribbean Programs  
City View Plaza II, Suite 7000  
#48 Rd. 165 km 1.2  
Guaynabo, PR 00968-8069  
Telephone: 787-977-5859  
E-mail: rivera-ocasio.evelyn@epa.gov

LOURDES BUFILL  
Attorney-Advisor  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
1200 Pennsylvania Ave., NW (2243A)  
Washington, DC 20460  
Telephone: 202-564-5128  
E-mail: Bufill.Lourdes@epa.gov